**IN THE HIGH COURT OF HIMACHAL PRADESH, SHIMLA.**

**Cr. Appeal No.124 of 2001.**

**Dated of Decision: December 24, 2007.**

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State of H.P. …… Appellant.

Versus

Rattan Lal. ……. Respondent.

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**Coram**

**The Hon'ble Mr. Justice Surinder Singh, Judge.**

*Whether approved for reporting? No.*

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| **For the Appellant** | **:** | Mr. V.K. Verma, Addl. Advocate General. |
| **For the Respondent** | **:** | Mr. Mohan Singh, Advocate, Vice Mr. B.N.Misra, Advocate. |

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***Surinder Singh, J (oral):***

The respondent was allegedly found in possession of 374 pouches of country liquor, therefore, convicted by the trial court under Section 61(1)(a) of the Punjab Excise Act, as applicable to the State of Himachal Pradesh and sentenced to undergo rigorous imprisonment for a period of six months and also to pay a fine of Rs.2,000/-, which was challenged by an appeal before the learned Sessions Judge. The first appellate court, reappraised the evidence and set-aside the conviction and sentence and acquitted the respondent.

The State has felt aggrieved from the acquittal passed by the first appellate court, accordingly the instant appeal has been filed.

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Whether reporters of local papers may be allowed to see the judgment? Yes.

Heard and gone through the record.

In brief, the facts of the case are that on 16.6.1998, Inspector Ram Saran of C.I.A staff was present in Krishna Nagar, locality of Shimla town alongwith other police officials. He got a secret information that the respondent had kept a huge quantity of country liquor in his store-room and if the search is conducted immediately, a huge quantity of liquor could be recovered. On this information, Ram Saran Inspector associated Virender Kumar and Puran Chand, independent witnesses of the locality and raided the premises of the respondent. During the search, he recovered 380 pouches, each containing 180 M.L. of liquor which were kept in a steel box. Six pouches were separated and kept as samples, thereafter sealed in a parcel for being sent to the Chemical Examiner. Remaining 374 pouches were kept in a gunny bag, which was also sealed separately. On his report, the FIR was formally registered. The separated six pouches were sent for the Chemical Examiner. On analysis, the country liquor was found therein. After completing the investigation, the challan was presented in the court.

The respondent was charge-sheeted for the offence aforesaid, but he pleaded not guilty and claimed trial. After the complete trial, the respondent was convicted by the trial court, but in appeal, he was acquitted and his acquittal is assailed in this appeal.

On a careful perusal of the evidence on record, I have found that the independent witnesses, who were alleged to have been associated by the Investigating Officer in the search, have turned hostile and they did not support the case of the prosecution at all.

As per the case of the prosecution, the aforesaid quantity of the liquor was found in the store of the respondent. The case property was taken into possession vide memo Ex.PW5/A and PW5 Inspector Ram Saran had prepared the site plan Ex.PW5/C. In the site plan the store has been shown on the first floor in a room adjacent to the living room of Puran Chand, but according to Puran Chand (PW2) where he has been residing there was a living room of Rattan Lal, respondent which was never searched by the Investigating Officer. The Investigating Officer has stated that the store-room was on the ground floor but the ground floor has been shown to have been occupied by Gian Chand and Balbir Singh in the site plan aforesaid, whereas, PW4 Virender Kumar has stated that he was taken by the police to the room of Ram Lal situated beside a common path which was owned by the Corporation and that room was not having any door and was vacant. There is no evidence on the record that the Corporation had leased out the store-room to the respondent. The alleged premises were locked. The Investigating Officer did not state whether the respondent had produced the key or that he broke open the lock or if it was being used by the

respondent as residential room also, what were his belonging inside to connect him with the alleged offence. In his statement under Section 313 Cr.P.C., the respondent has denied the alleged recovery from his possession and according to him, he lived far away from the alleged store, which was in occupation of Ram Lal, who is now dead.

Thus, in my considered opinion, the prosecution has failed to prove that the alleged quantity of liquor was recovered from the store, which was in exclusive possession of the respondent. Therefore, non-explanation of the above facts cast a doubt on the authenticity of the prosecution case.

In these circumstances aforesaid, the respondent could not have been convicted by the trial court. Thus, the conviction of the respondent has been rightly set-aside by the first appellate court, wherein I do not find any discrepancy. Accordingly, the appeal is dismissed.

The respondent is discharged of his bail bonds entered upon by him at any time during the proceedings of the case.

Send down the records.

**December 24, 2007.** **(Surinder Singh)**
**(Pds)** **Judge.**